HIGH COURT OF UTTARANCHAL, AT NAINITAL

Special Appeal No. 70 of 2006

1. State of Uttaranchal through Secretary
   Horticulture & Food Processing, Dehradun
2. The Director
   Horticulture & Food Processing,
   Uttaranchal, Udyan Bhawan, Chaubatia
   Ranikhet ….Appellants

Versus

Pratap Singh S/o Sri Dhyan Singh
R/o Rajyakiya Udyan Ramtal
Nagau Garden (Chakrata)
Nagau, District Dehradun ….Respondent

Delivery of Judgment:-22nd August, 2006

Mr. Nanak Chand Gupta learned Standing Counsel for the appellants.
Mr. Ramji Srivastava learned counsel for the respondent.

Coram: Hon'ble Rajeev Gupta, C. J.
Hon'ble J. C. S. Rawat, J.

1. This special appeal under Rule 5 Chapter VIII of the High court Rules has been filed against the judgment and dated 02.09.2003 passed by the learned Single Judge of this Court in Civil Misc. Writ Petition No. 1754(S/S) 2001 (Old No. 34352/1998) Pratap Singh Vs. The Director, Horticulture & Food Processing (Hills), whereby the learned Single Judge has allowed the writ petition.

2. A writ petition was filed by the respondent-Pratap Singh with the following prayers:-

(i) To issue an order, direction or writ in the nature of certiorari quashing the order dated 25.03.1988, contained in Annexure No. 1 to the writ petition.

(ii) To issue an order, direction or writ in the nature of mandamus commanding the respondent to promote the

petitioner in class-III category with effect from 1983.

(iii) To issue any other order, direction or writ as in the circumstances of the case.

3. In the writ petition, the petitioner-Pratap Singh (now 'respondent' in special appeal) has alleged that he belongs to scheduled tribes community and he was appointed as "Mali' by the appointment letter dated 05.05.1964 and his service was confirmed by the order dated 22.01.1975 w.e.f. his date of appointment i.e. 05.05.1964. The Government issued an office Memorandum dated 17.11.1982 directing the authorities concerned to prepare a list of Class-IV employees according to their seniority and 40% employees from the post of Head Chaudhari, Mali, Parichar and other technical employees in similar pay scale be promoted in the pay scale of Rs.200-320, according to their seniority. It was also directed that the employees, who have the knowledge of reading and writing of Hindi language, will be eligible for promotion according to their seniority. Thereafter, several employees, who were junior to the petitioner-Pratap Singh, were promoted but the claim of the petitioner had not been considered. The petitioner-Pratap Singh had further alleged that Anand Giri, Thakur Prasad Maurya, Basant Lal and Deewan Giri who were junior to him had been promoted to Class III category. The petitioner-Pratap Singh had made several representations with the prayer to promote him as he is much senior to the above-mentioned persons. The petitioner had also alleged in the representation that since he belongs to scheduled tribes community, hence he is entitled to get the benefit of reservation policy as

well. The authority concerned had rejected the representation of the petitioner on 25.03.1998 on the ground that since he has not passed the high school examination hence he is not eligible for promotion. Feeling aggrieved by order dated 25.03.1998, the petitioner-Pratap Singh has filed the writ petition before this Court.

4. The respondents had filed the counter affidavit in which the appointment of the petitioner in the department had not been disputed. It was alleged by the respondents that only to the extent of 10% of the total strength of Mali & peons were declared for promotion according to their seniority in the pay scale of Rs.200-320/- and not to the extent of 40% as alleged by the petitioner. The petitioner did not fulfill the required eligibility and conditions in the order of seniority for being entitled to the said promotion. It was further alleged that the State Government had also framed Rules in the year 1993. The petitioner did not fulfill the requisite qualification and eligibility as laid down in the Rules framed by the Government. Munna Lal Pandey was in the superior pay scale to the petitioner and accordingly he was promoted. Anand Giri, Thakur Prasad Maurya and Diwan Giri were seniors to the petitioner being in a different pay scale. It was further alleged that there were only 13 posts at the relevant time and the reservation quota for scheduled tribes was only 2%. The reserved post was not available to be filled up by the scheduled tribes candidate at the material time. It was further alleged that the petitioner did not fulfill the requisite qualification and he had not passed the high school examination and as such he was not fit for promotion

and there was no option to reject the claim of the petitioner.

5. After hearing the parties, the learned Single Judge had held that Basant Lal, Munna Lal Pandey, Anand Giri, Thakur Prasad Maurya and Diwan Giri have been named in para 5 & 6 to the writ petition and they were stated to be seniors to the petitioner being in a different pay scale. The case of the petitioner cannot be equated with them. It was further held that the petitioner was confirmed in the year 1975 whereas Hari Ram was confirmed in the year 1972 and he was also senior to the petitioner. As such, Hari Ram did not stand in a similarly situated position with the petitioner. The learned Single Judge further held that Daya Kishan Sanwal and Rameshwar Prasad, who were confirmed in the year 1976 and 1979 respectively, have been promoted, but no statement had been made in the counter affidavit as to how they were promoted ignoring the claim of the petitioner. Ultimately, the learned Single Judge has allowed the writ petition and has directed the respondents to reconsider the case of the petitioner, if the petitioner is similarly situated as Daya Kisan Sanwal and Rameshwar Prasad. Feeling aggrieved by the order of the learned Single Judge, the appellants (State of Uttaranchal & other) has filed the present appeal.

6. We have heard learned counsel for the parties.

7. Learned counsel for the appellants contended that the respondent-Pratap Singh had claimed parity in the writ petition with Munna Lal Pandey, Anand Giri, Thakur Prasad Maurya, Basant Lal and Diwan Giri. The appellants had submitted the counter affidavit and gave their explanation as to why the respondent-Pratap Singh was not promoted vis-à-vis to the persons mentioned in

the writ petition. It was further contended that the learned Single Judge has accepted the clarification made by the appellants. It was contended that the respondent-Pratap Singh had not made any averment in the writ petition with regard to the parity with Daya Kisan Sanwal and Rameshwar Prasad. If the respondent-Pratap Singh would have made the averment in the writ petition about the parity with Daya Kisan Sanwal and Rameshwar Prasad, the appellants would have submitted their clarifications with regard to these employees. It was further contended on behalf of the appellants that the learned Single Judge erred in holding that the appellants had not made any statement with regard to the these employees in his counter affidavit as to why they were promoted ignoring the claim of the respondent. Learned counsel for the respondent-Pratap Singh could not demonstrate us that he had pleaded the parity with Rameshwwar Prasad and Daya Kisan Sanwal in his writ petition. It is well settled position of law that the whole object of pleading is to give fair notice to each party of what the opponent's case is, and to ascertain, with precision, the points on which the parties agree and those on which they differ, and thus to bring the parties to a definite issue. The purpose of pleading is also to eradicate irrelevancy. In order to have a fair trial it is imperative that the party should state the essential facts so that other party may not be taken by surprise. The parties thus themselves know what are matters left in dispute and what facts they have to prove at the proceeding and are thus given an opportunity to bring forward such evidence as may be appropriate. The main object of pleadings is to find out and narrow down the controversy between the parties. Contentions which are not based on the pleadings cannot be permitted to be

raised either at the time of arguments or at the appellate stage. Thus, if an averment is not made in the petition the petitioner cannot be allowed to argue on that point. Had the petitioner made an averment in the body of the writ petition claiming the parity with Daya Kisan Sanwal and Rameshwar Prasad, the appellants would have an opportunity to rebut the averment in the counter affidavit. If the appellants had no opportunity to meet with the averment and if the appellants were taken to surprise at the time of argument in the writ petition, the blame cannot be cast upon the appellants as to why the same had not been clarified. During the the special appeal, the appellants had alleged that Daya Kisan Sanwal and Rameshwar Prasad at the time of promotion to Class III post were working on the post of Kamdars (Potato) which was a higher pay scale post than the post of Mali, which was held by the respondent all along. Thus, the case of the respondent-Pratap Singh and the case of petitioner could not be equated with the Rameshwar Prasad and Daya Kisan Sanwal. Had the petitioner made an averment in his pleading claiming the parity with Daya Kisan Sanwal and Rameshwar Prasad, the appellant would have an opportunity to rebut by placing the above clarification before the court. Therefore, we are of the considered opinion that if the respondent-Pratap Singh had not pleaded the parity with Ramsehwar Prasad and Daya Kisan Sanwal, who were junior to him, have been promoted in Class III category and the opportunity had not been given to the appellants to rebut the same, the appellants were not in a position to submit their clarification about them. In the above circumstances, we are of the considered opinion that the learned Single Judge was not justified in holding that in absence of the

pleading of the respondent-Pratap Singh claiming parity with Daya Kisan Sanwal and Rameshwar Prasad, the appellants had not given any clarification with regard to Daya Kisan Sanwal and Rameshwar Prasad in their counter affidavit and allowing the parity of the respondent on that ground. We are of the considered view that the order dated 02.09.2003 passed by the learned Single Judge in Civil Misc. Writ Petition No.1754(S/S) 2001 is not sustainable.

8. In view of the foregoing discussion, the appeal is liable to allowed. The appeal is allowed. Therefore, the order dated 02.09.2003 passed by the learned Single Judge in Civil Misc. Writ Petition No.1754(S/S)2001 is set aside. Parties shall bear their own costs of both the courts.

(J.C.S. Rawat, J.) (Rajeev Gupta, C.J.)

Dated 22.08.2006
LSR